

DEPARTMENT OF LABOR AND INDUSTRY

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Sub-Chapter 1

Organization

24.26.101 ORGANIZATION OF BOARD OF PERSONNEL APPEALS

(1) The board of personnel appeals of the department of labor and industry herein adopts and incorporates the organizational structure of the board of personnel appeals as it has been set out and explained in Chapter 1 of Title 24, Administrative Rules of Montana. (History: Sec. 2-4-201 MCA; IMP, 2-4-201, MCA; NEW, 1978 MAR p. 74, Eff. 1/25/78; AMD, 1978 MAR p. 192, Eff. 2/24/78.)

24.26.102 BOARD MEETINGS, QUORUM

(1) The board of personnel appeals shall meet upon the call of the chairman or at the written request of three members at a time and place designated by the chairman or members calling the meeting.

(2) A majority of the membership, provided that the chairperson is present, constitutes a quorum to do business.

In all proceedings before the board, a favorable vote of at least a majority of a quorum is sufficient to adopt any resolution, motion, or other decision.

(3) The board shall select a member or an agent to act as administrator of the board. (History: Sec. 2-4-201, MCA; IMP, 2-4-201 MCA; NEW, 1978 MAR p. 74, Eff. 1/25/78; AMD, 1978 MAR p. 192, Eff. 2/24/78; AMD, 1984 MAR p. 599, Eff. 4/13/84.)

Sub-Chapter 2

Procedural Rules

24.26.201 ADOPTION OF ATTORNEY GENERAL MODEL RULES

(1) Pursuant to the authority vested in the board of personnel appeals of the department of labor and industry, this board adopts the model rules proposed by the attorney general as adopted by the department of labor and industry. (History: Sec. 2-4-201, MCA; IMP, 2-4-201, MCA; NEW, 1978 MAR p. 74, Eff. 1/25/78; AMD, 1978 MAR p. 192, Eff. 2/24/78.)

24.26.202 BOARD BUSINESS

(1) All requests, petitions, and other correspondence to the board should be addressed to the Board of Personnel Appeals, P.O. Box 6518, Helena, MT 59604-6518.

(2) Any complaint, answer, petition or other document required or allowed to be filed with the board or served on a party may be filed or served by means of a telephonic facsimile communication device (fax). The board fax number is (406) 444-7071.

(3) Filings with the board by fax are subject to the following conditions:

(a) a filing must conform with all applicable rules, except that only one copy of a document need be filed by fax even when multiple copies otherwise would be required;

(b) when a document is received after 5:00 p.m. Mountain Time, the date of filing of that document, for purposes of board rules, will be the date of the next regular work day;

(c) the original document and any copies must be received by the board within 5 days of the fax transmittal or the filing will not be recognized as timely; and

(d) the board's failure to receive a fax, for any reason, including but not limited to the unavailability or failure of fax equipment or transmission lines, does not excuse the late filing of documents. (History: Sec. 2-4-201, MCA; IMP, 2-4-201, MCA; NEW, 1978 MAR p. 74, Eff. 1/25/78; AMD, 1978 MAR p. 192, Eff. 2/24/78; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.203 SERVICE OF PROCESS (1) All service and computation of time in proceedings before this board shall be bound by the Montana Rules of Civil Procedure. (History: Sec. 2-4-201, MCA; IMP, 2-4-201, MCA; NEW, 1978 MAR p. 74, Eff. 1/25/78; AMD, 1978 MAR p. 192, Eff. 2/24/78.)

24.26.204 INTERVENTION (1) Any state employee, group of state employees, employee representative, or public employer may be permitted to intervene by serving a motion to intervene upon the parties and the board. The motion shall be accompanied by affidavit(s) establishing a basis for intervention. The board shall determine the validity of the basis for intervention. (History: Sec. 2-4-201, MCA; IMP, 2-4-201, MCA; NEW, 1978 MAR p. 74, Eff. 1/25/78; AMD, 1978 MAR p. 192, Eff. 2/24/78.)

24.26.205 AMENDING PETITIONS (1) Any petition may be amended, in whole or in part, by the petitioner or the board, or withdrawn by the petitioner at any time prior to the casting of the first ballot in an election, or prior to the closing of a case, upon such conditions as the board considers proper and just. (History: Sec. 2-4-201, MCA; IMP, 2-4-201, MCA; NEW, 1978 MAR p. 74, Eff. 1/25/78; AMD, 1978 MAR p. 192, Eff. 2/24/78.)

24.26.206 COMPUTING TIME FOR RESPONSES (1) For the purposes of these rules, the term "days" means calendar days, unless otherwise specified.

(2) When a document is personally delivered, the time period specified for a response is counted starting the day after the delivery is made.

(3) When a document is mailed, the time period specified for a response is counted starting 3 days after the date of the postmark on the envelope.

(4) Mailed documents are presumed to be mailed on the day they are dated. That presumption may be rebutted by a showing of the postmark. The burden of proof for showing that a document was mailed on a date different than the document's date rests with the person who claims that it was mailed on the different date. (History: Sec. 2-4-201, MCA; IMP, Sec. 2-4-201, MCA; NEW, 1993 MAR p. 3026, Eff. 1/1/94.)

Rules 24.26.207 through 24.26.209 reserved

24.26.210 CONTESTED CASES, DEFAULT ORDER WHEN PARTY FAILS TO APPEAR AT HEARING (1) When a notice of a hearing has been given, but a party fails to appear at the time specified for that hearing, the board of personnel appeals shall enter an order at that time, stating the evidence before it supporting the board's action. If the defaulting party is able to show good cause for his absence, the order will be vacated and a new hearing date set. (History: Sec. 2-4-201, MCA; IMP, 2-4-201, MCA; NEW, 1978 MAR p. 74, Eff. 1/25/78; AMD, 1978 MAR p. 192, Eff. 2/24/78.)

Rule 24.26.211 reserved

24.26.212 MOTIONS (1) All motions other than those made during a hearing shall be made in writing and submitted to the board. They shall briefly state the relief sought, and shall be accompanied by affidavits setting forth the grounds upon which they are based. The moving party shall serve a copy of all motions on all other parties and shall file with the board the original with proof of service. Answering affidavits, if any, must be served on all parties and the original thereof, together with proof of service, shall be filed with the board within 5 days after service of the moving papers, unless the board directs otherwise. The board may decide to hear oral argument or testimony thereon.

(2) Motions for postponements of hearing or conference scheduled by the division will not be granted unless good and sufficient cause is shown and the following requirements are met:

(a) The request must be in writing directed to the administrator or hearing examiner.

(b) The grounds for the request must be set forth in detail.

(c) The requesting party must specify alternative dates for rescheduling the hearing or conference.

(d) The position of all parties must be ascertained in advance by the requesting party and set forth in the request.

(e) copies of the request must be served contemporaneously on all parties, and that fact must be noted on the request.

(f) The request must be signed by the person making it.

(3) Except for good cause shown, no request for postponement will be granted on any of the 3 days immediately preceding the date of the hearing or conference. (History: Sec. 2-4-201, MCA; IMP, 2-4-201, MCA; NEW, 1978 MAR p. 74, Eff. 1/25/78; AMD, 1978 MAR p. 192, Eff. 2/24/78; AMD, 1979 MAR p. 1494, Eff. 11/30/79.)

Rules 24.26.213 and 24.26.214 reserved

24.26.215 HEARINGS (1) The board shall conduct its hearing in accordance with the appropriate provisions of the Administrative Procedure Act.

(2) If a member of the board or an examiner appointed by the board presides over the hearing, the member, or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding findings of fact, conclusions of law and recommended order, which shall be filed with the board, and if no written exceptions specifically stating to which part of the recommended order exception is being taken are filed with this board within 20 days after service of the recommended order upon the parties, or within such further period as the board may authorize, the recommended order shall become the order of the board.

(3) If the board refuses to adopt a board appointed examiner's proposal for decision (findings of fact, conclusions of law, and recommended order) as its final decision or order and, instead, remands the proposal or portion thereof to the examiner for further consideration pursuant to board direction, the examiner shall conduct whatever proceedings are necessary and conform the proposal for decision to board direction.

(a) The examiner shall serve the conformed proposal on all parties as well as upon the board's administrative assistant. The board shall then consider the conformed proposal at a regularly scheduled meeting prior to issuing a final decision.

(b) Parties may file exceptions to any new material contained within the conformed proposal for decision. Exceptions must be filed, in writing, with the administrative assistant to the Board of Personnel Appeals at P.O. Box 6518, Helena, MT 59604-6818. To be considered, exceptions must be postmarked by no later than 20 days from the service of the conformed proposal for decision. If no exceptions are filed, the board will rule on the record before it, including the conformed proposal for decision. If exceptions are filed, the parties shall be afforded an opportunity to appear before the board prior to issuance of a final board order.

(4) If the board presides over the hearing, the board shall cause to be served on the parties to the proceeding a final order. (History: 2-4-201 and 39-31-104, MCA; IMP, 2-4-201 and 39-31-105, MCA; NEW, 1978 MAR p. 74, Eff. 1/25/78; AMD, 1978 MAR p. 192, Eff. 2/24/78; AMD, 1979 MAR p. 1494, Eff. 11/30/79; AMD, 2000 MAR p. 2308, Eff. 8/25/00.)

24.26.216 DECLARATORY RULINGS (1) On petition of any interested person, the board may, in its discretion, issue a declaratory ruling with respect to the applicability of any statement of facts to any rule or statute enforceable by the board.

(2) The petition to institute proceedings for a declaratory ruling shall contain:

(a) the rule or statute upon which petitioner seeks a declaratory ruling;

(b) a detailed statement of the facts upon which petitioner requests the board to issue a declaratory ruling;

(c) sufficient facts to show that petitioner will be affected by the requested declaratory ruling;

(d) all propositions of law or contentions to be asserted by petitioner;

(e) the questions presented for decision by the board;

(f) the specific relief requested; and

(g) the name and address of petitioner and of any other person known by petitioner to be interested in the requested declaratory ruling.

(3) The board shall, within 60 days after the petition is filed, notify the petitioner and any other person known by the petitioner to be interested in the requested declaratory ruling whether the board will issue a ruling. The board will generally not issue a declaratory ruling concerning a matter that is the subject of an unfair labor practice case or that, in the judgment of the board, would be more appropriately considered through a contested case proceeding. If the board decides to issue a ruling, it shall serve all parties named in the petition by mailing:

(a) a copy of the petition; and

(b) a notice of the time and place of hearing at which the petition will be considered.

(4) After a hearing is held the board shall issue its declaratory ruling within 60 days of the close of the hearing or, where briefs are filed subsequent to the hearing, within 60 days of the close of the hearing. (History: 2-4-201, MCA; IMP, 2-4-201, MCA; NEW, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.217 EXTENSION OR WAIVER OF TIME LIMITS (1) Time limits provided for in these rules may be waived or extended as follows:

(a) by written agreement between the parties, subject to final approval of the board; or

(b) by motion to the board, subject to the granting of the

designated agent.

(2) "Department" means the Montana department of transportation.

(3) "Department designee" means any person authorized by the director of the department of transportation to act on behalf of the director in a personnel matter.

(4) "Department head" means the director of the Montana department of transportation.

(5) "Employee" means any person employed in the Montana department of transportation.

(6) "Employee grievance" means an employee's dissatisfaction concerning an employment-related matter based upon working conditions, supervision, or the result of administrative action except those arising from the Classification and Wage Act, as provided in 2-18-1011, MCA.

(7) "Working days" means all calendar days except Saturdays, Sundays and holidays. (History: Sec. 2-18-1001, MCA; IMP, 2-18-1002, MCA; NEW, Eff. 5/5/75; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.303 GRIEVANCE PROCEDURE (1) Step one:

(a) An employee may utilize the grievance procedure set out in this rule after exhausting all available administrative remedies for grievances within the department as set forth in the department's rules or regulations, by obtaining a personnel grievance form, completing it by detailing the specifics of the grievance and submitting it to the employee's immediate supervisor or department designee for consideration within 180 days after the alleged incident or action occurred. A copy of the form must be retained by the employee.

(b) The immediate supervisor or department designee shall have 3 working days to examine the grievance, to record findings and to indicate support or nonsupport of the grievance on the form, and return the form to the employee.

(2) Step two:

(a) If the immediate supervisor's or department designee's response is timely returned to the employee and the employee wishes to continue the grievance, the employee shall do so by submitting the form, or a copy thereof, with all appropriate sections completed, to the department head within 3 working days. If the immediate supervisor or department designee does not respond timely, the employee may advance the grievance by submitting the form, or a copy thereof, with all appropriate sections completed, to the department head within 3 working days.

(b) The department head shall have 5 working days to review the grievance, to record findings in the appropriate section of the form, to indicate support or nonsupport of the grievance, and to return it to the employee.

(c) In the event the employee accepts the department head's findings and recommendation, the recommendation shall become effective upon notification to the department head by the employee.

(d) In the event the employee rejects the department head's recommendation, the employee may submit the grievance for final resolution pursuant to step three.

(3) Step three:

(a) If the department head's response is timely returned to the employee and the employee wishes to continue the grievance, the employee shall do so by submitting the form, or a copy thereof, with all appropriate sections completed, to the board of personnel appeals within 10 working days for final resolution. If the department head does not respond timely, the employee may advance the grievance by submitting the form, or a copy thereof, with all appropriate sections completed, to the board of personnel appeals within 10 working days for final resolution.

(b) An agent of the board of personnel appeals shall have 30 days from receipt of the form to conduct the inquiry and render a preliminary decision. If the employee or the department rejects the preliminary decision, appeal to the board must be made within 5 working days. The board, a member of the board, or an examiner appointed by the board shall schedule a pre-hearing conference in accordance with appropriate provisions of the Administrative Procedure Act within 30 days of rejection of the preliminary decision.

(c) If a member of the board or an examiner appointed by the board presides over the hearing, the member, or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon the parties, or within such further period as the board may authorize, the recommended order shall become the order of the board.

(d) If the board presides over the hearing, the board shall cause to be served on the parties to the proceeding a final order. (History: Sec. 2-18-1001, MCA; IMP, 2-18-1002, MCA; NEW, Eff. 5/5/75; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.304 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION (1) Any employee who files a grievance or who testifies or submits evidence in any proceeding in this chapter shall be assured freedom from restraint, interference, coercion, or reprisal and if these freedoms are denied the employee through supervisory or administrative action, the employee shall be entitled to file a grievance with the board.

(2) If a grievance is filed pursuant to this rule, the board shall serve the grievance upon the department and the department shall have 10 days in which to respond to the grievance. After the 10 days have elapsed, the grievance shall commence at step three (b) of the formal grievance procedure provided in ARM 24.26.303. (History: Sec. 2-18-1001, MCA; IMP, 2-18-1001(2), MCA; NEW, Eff. 5/5/75; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

Sub-Chapter 4

Department of Fish, Wildlife, and Parks Grievance

24.26.401 PURPOSE (1) The purpose of these rules is to provide all employees of the Montana department of fish, wildlife, and parks with a procedure to file and process personnel grievances. (History: Sec. 87-1-205, MCA; IMP, 87-1-205, MCA; NEW, 1978 MAR p. 75, Eff. 1/25/78.)

24.26.402 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Board" means the board of personnel appeals or its designated agent.

(2) "Department" means the Montana department of fish, wildlife, and parks.

(3) "Department designee" means any person authorized by the director of the department of fish, wildlife, and parks to act on behalf of the director in a personnel matter.

(4) "Department head" means the director of the department of fish, wildlife, and parks.

(5) "Employee" means any person employed in the Montana department of fish, wildlife, and parks.

(6) "Employee grievance" means an employee's dissatisfaction concerning an employment-related matter based upon working conditions, supervision, or the result of administrative action except those arising from the operation of the statewide classification and pay plan as provided in 2-18-1011, MCA.

(7) "Working days" means all calendar days except Saturdays, Sundays and holidays. (History: Sec. 87-1-205, MCA; IMP, 87-1-205, MCA; NEW, 1978 MAR p. 75, Eff. 1/25/78; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.403 GRIEVANCE PROCEDURE (1) Step one:

(a) An employee may utilize the grievance procedure set out in this rule after exhausting all available administrative remedies for grievances within the department as set forth in the department's rules or regulations, by obtaining a Personnel Grievance form, completing it by detailing the specifics of the grievance and submitting it to the employee's immediate supervisor or department designee for consideration within 180 days after the alleged incident or action occurred. A copy of the form must be retained by the employee.

(b) The immediate supervisor or department designee shall have 3 working days to examine the grievance, to record findings and to indicate support or nonsupport of the grievance on the form, and return the form to the employee.

(2) Step two:

(a) If the immediate supervisor's or department designee's response is timely returned to the employee and the employee wishes to continue the grievance, the employee shall do so by submitting the form, or a copy thereof, with all appropriate sections completed, to the department head within 3 working days. If the immediate supervisor or department designee does not respond timely, the employee may advance the grievance by submitting the form, or a copy thereof, with all appropriate sections completed, to the department head within 3 working days.

(b) The department head shall have 5 working days to review the grievance, to record findings in the appropriate section of the form, to indicate support or nonsupport of the grievance, and to return it to the employee.

(c) In the event the employee accepts the department head's findings and recommendation, the recommendation shall become effective upon notification to the department head by the employee.

(d) In the event the employee rejects the department head's recommendation, the employee may submit the grievance for final resolution pursuant to step three.

(3) Step three:

(a) If the department head's response is timely returned to the employee and the employee wishes to continue the grievance, the employee shall do so by submitting the form, or a copy thereof, with all appropriate sections completed, to the board of personnel appeals within 10 working days for final resolution. If the department head does not respond timely, the employee may advance the grievance by submitting the form, or a copy thereof, with all appropriate sections completed, to the board of personnel appeals within 10 working days for final resolution.

(b) An agent of the board of personnel appeals shall have 30 days from the receipt of the form to conduct the inquiry and render a preliminary decision. If the employee or the department rejects the preliminary decision, appeal to the board must be made within 5 working days. The board, a member of the board or an examiner appointed by the board shall schedule a hearing in accordance with appropriate provisions of the Administrative Procedure Act within 30 days of rejection of the preliminary decision.

(c) If a member of the board or an examiner appointed by the board presides over the hearing, the member, or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service

thereof upon the parties, or within such further period as the board may authorize, the recommended order shall become the order of the board.

(d) If the board presides over the hearing, the board shall cause to be served on the parties to the proceeding a final order. (History: Sec. 87-1-205, MCA; IMP, 87-1-205, MCA; NEW, 1978 MAR p. 75, Eff. 1/25/78; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.404 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION (1) Any employee who files a grievance or who testifies or submits evidence in any proceeding in this chapter shall be assured freedom from restraint, interference, coercion, or reprisal and if these freedoms are denied the employee through supervisory or administrative action, the employee shall be entitled to file a grievance with the board.

(2) If a grievance is filed pursuant to this rule, the board shall serve the grievance upon the department and the department shall have 10 days in which to respond to the grievance. After the 10 days have elapsed, the grievance shall commence at step three (b) of the formal grievance procedure provided in ARM 24.26.403. (History: Sec. 87-1-205, MCA; IMP, 87-1-205, MCA; NEW, 1978 MAR p. 75, Eff. 1/25/78; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

Sub-Chapter 5

Wage and Classification Appeals

24.26.501 PURPOSE (1) The purpose of these regulations is to provide all classified employees of the State of Montana an orderly and uniform method to file and process appeals arising from the operation of the state employees' classification and pay plan Title 2, chapter 18, MCA. (History: Sec. 2-18-1011 MCA; IMP, 2-18-1011 MCA; NEW, Eff. 7/5/75.)

24.26.502 DEFINITIONS (1) "Employee" means any person employed by the state of Montana, except: elected officials and their chief deputy and executive secretary; officers and employees of the legislative branch; judges and employees of the judicial branch; members of boards and commissions appointed by the governor, appointed by the legislature or appointed by other elected state officials, officers or members of the militia; agency heads appointed by the governor; academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education; personal staff of the executive officials enumerated in article VI, section one of the constitution of Montana.

(2) "Agency" means any department, board, commission, office, bureau, institution or unit of state government recognized in the state budget.

(3) "Department" means one of the 20 principal departments within the executive branch, as provided by the constitution.

(4) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of a department.

(5) "Board" means the board of personnel appeals or its designated agent.

(6) "Personnel Division" means the personnel division of the department of administration.

(7) "Inquiry" means the process of gathering and weighing evidence bearing on appeals. This process may include securing documents, holding individual interviews or group meetings, conducting a hearing, or any combination of the above.

(8) "Appeal" means any complaint filed with the board of personnel appeals relating to the operation of the state employees' classification and pay plan, Title 2, chapter 18, MCA.

(9) "Working days" means all calendar days except Saturdays, Sunday, or legal holidays.

(10) "Form" means the state employees classification and wage appeal form BPA-C(1).

(11) "Formal appeals procedure" means the appeals procedure provided for state employees in ARM 24.26.508. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75.)

24.26.503 INFORMAL RESOLUTION OF APPEALS (1) The board encourages the personnel division and state employees to attempt to resolve appeals through an informal procedure as prescribed by the personnel division before initiating the formal appeals procedure. Every attempt should be made to resolve an appeal at the earliest possible stage of the appeals process, preferably between the employee and their immediate supervisor. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75; AMD, 1981 MAR p. 624, Eff. 6/26/81.)

Rules 24.26.504 through 24.26.507 reserved

24.26.508 GRIEVANCE PROCEDURE (1) Any employee, group of employees, or appropriately designated representatives, may utilize this formal grievance procedure. The individual employee must obtain a state employee classification and wage appeal form and follow the accompanying instructions. In the case of a potential group appeal, the group of employees must comply with the rules governing consolidated appeals (ARM 24.26.513). Appeal forms may be obtained from the Board of Personnel Appeals, P.O. Box 1728, Helena, Montana 59624-1728, or from the personnel office of any department within the executive branch.

(a) The completed appeal form shall be submitted together with the current position description, signed by the employee and the immediate supervisor. If the current position description is disputed, the employee may also submit a proposed position description, which represents the employee's understanding of the duties and responsibilities of the position and is signed by the employee.

(b) To complete the appeal form, the employee must identify the issue or issues motivating the appeal and explain the reasons each listed issue is being appealed. A list of appealable issues will be provided with the appeal form.

(c) Pursuant to section 2-18-203(2), MCA, the grade assigned to a class is not an appealable subject. The appeal shall be described in terms of the following appealable issues:

(i) substantial changes have occurred in this position to warrant reclassification. Specifically, this position should be allocated to (list class code and class title);

(ii) this position was incorrectly allocated to (list class code and class title) and should be allocated to (list class code and class title);

(iii) pursuant to point factoring methodology, inappropriate levels have been assigned to the following factors: (list all applicable factors);

(iv) The pay plan rules have been incorrectly applied to this position (specific rule(s) should be cited); and

(v) Other - issue must specifically relate to position classification.

(2) Step one:

(a) The employee shall submit the appeal form and accompanying material to the department head or department designee. The department head or designee shall have 15 working days to review the appeal, record his or her findings, record steps taken to resolve the appeal, and return it to the employee.

(b) The department head or designee is not limited to the issues raised by the employee in the appeal form, but may address any other issue listed in (1)(c) above, deemed by the department head or designee to be important to the appeal.

(c) If the employee does not accept the findings of the department head or designee, the employee shall have 15 working days to forward the appeal to the state personnel division, step two. The employee must identify and explain, in writing, how he or she disagrees with the findings of the department head or designee.

(3) Step two:

(a) The state personnel division shall have 30 working days to review the matter, record its findings in the appropriate section of the form, and return it to the employee or the proper representative.

(b) The state personnel division's review and findings are not limited to the issues raised by the employee in the appeal form, but may address any other issues listed in (1)(c) above, deemed by the state personnel division to be important to the appeal.

(c) The state personnel division must prepare clear written findings explaining its position regarding each relevant issue.

(d) If the employee accepts the state personnel division's findings and recommendations, the formal appeals procedure is concluded upon the implementation of the state personnel division's findings and recommendations.

(e) If the employee rejects the state personnel division's findings and recommendations or if the state personnel division fails to make its findings within 30 working days, the employee shall have 15 working days to forward the appeal to the board of personnel appeals at step three.

(4) Step three:

(a) The employee must identify and explain, in writing, how the employee disagrees with the state personnel division's findings.

(b) The board or its designee shall have 15 working days to accept or reject the appeal for hearing at step three.

(i) The board or its designee shall examine the issue(s) identified by the employee in the appeal form and the issues, findings and explanations addressed by the department head or designee, or the state personnel division in steps one and two. If the issue(s), findings and explanations are adequately addressed, the board or its designee will accept the appeal at step three and serve notice of acceptance on the state personnel division and the employee within 10 working days. The board's notice to the state personnel division will include a copy of the employee's written explanation of why the employee disagrees with the state personnel division's step two response.

(ii) If the board or its designee finds that the issues, findings or explanations raised by the employee, the department head or designee, or the state personnel division are not adequately addressed, the board or its designee shall return the appeal to the appropriate party. In such case, the party will expand its issues, findings or explanations and refile them with the board within 15 working days.

(c) If, in the discretion of the board or its designee, a decision is made to conduct a preliminary investigation of the appeal, it shall have 20 working days to investigate and issue a preliminary decision. The board or its designee may carry out any investigation deemed necessary for resolution of the appeal or complaint. The employee or group of employees and the state personnel division shall have 15 working days to accept or reject the preliminary decision. If the employee or group of employees and the state personnel division accept the preliminary decision, it shall be final and binding.

(d) If the employee, group of employees, or the state personnel division rejects the preliminary decision; or the board or its designee, in its discretion, decides not to conduct a preliminary investigation, the board or its designee shall conduct a hearing in accordance with Title 2, chapter 4, MCA.

(e) Any investigation and/or hearing conducted by the board or its designee shall be restricted to the issues identified in the appeal form or during step one and step two.

(f) If the preponderance of evidence taken at the hearing shows the employee is aggrieved, the board or its designee shall issue an order requiring action to resolve the employee's grievance.

(g) Upon the conclusion of the hearings process, the board or its designee shall issue its proposed findings of fact, conclusions of law, and recommended order within 90 working days.

(h) The prescribed time limits at any step of the appeal process may be modified or waived upon mutual agreement of the affected parties. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75; AMD, Eff. 12/4/76; AMD, 1978 MAR p. 74, Eff. 1/25/78; AMD, 1981 MAR p. 624, Eff. 6/26/81; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

Rules 24.26.509 through 24.26.512 reserved

24.26.513 CONSOLIDATED APPEALS (1) If the facts of several given appeals affect a large number of employees in the same manner, the board may designate the appeals as a consolidated appeal.

(2) The affected employees shall designate one individual as the contact person for notice purposes. Notice of intent to maintain a consolidated appeal shall immediately be sent by the contact person to the board or its designee. As soon as practicable after notice is sent, the board or its designee shall approve or disapprove the consolidated appeal and shall notify the contact person of its decision. Such decision may be conditional, and may be altered or amended at any time before the final order of the board after a hearing.

(3) In a case designated as a consolidated appeal by the board or its designee, the appeal shall begin at step one of the formal appeals procedure provided in ARM 24.26.508. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

Rules 24.26.514 through 24.26.517 reserved

24.26.518 FAILURE OF DEPARTMENT HEAD, DESIGNEE, OR STATE PERSONNEL DIVISION TO ACT WITHIN PRESCRIBED TIME LIMIT (1) If the department head or designee, or the state personnel division does not respond to an employee's appeal within the prescribed time limits in the appeals procedure, the employee may advance the appeal to the next step in the appeal procedure by forwarding his or her original copy of form and a new copy of form to the next step within 15 days of the expiration of the time limit. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

Rules 24.26.519 through 24.26.522 reserved

24.26.523 FILING OF A NEW PETITION FOR HEARING AFTER FINAL ORDER ISSUED (1) After a final order concerning a position has been issued by the board, a new hearing will be granted only upon a showing of some substantial change in that position or the job evaluation methodology which was not considered at the prior hearing and which would warrant a new hearing by the board or its designee.

(2) The employee shall include with his or her petition a signed affidavit stating the substantial change.

(3) The petition and the affidavit shall proceed through the appeals procedure as prescribed in ARM 24.26.508 up to step three (b).

(4) The board or its designee shall then conduct a preliminary investigation to determine if the alleged substantial change warrants a new hearing.

(a) If it is determined that the alleged substantial change warrants a new hearing, the appeal procedure shall proceed as prescribed in ARM 24.26.508.

(b) If it is determined that the alleged substantial change does not warrant a new hearing, the petition shall be dismissed.

(5) The order to dismiss shall be an appealable order. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 12/4/76; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

Rules 24.26.524 through 24.26.529 reserved

24.26.530 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION (1) If an employee's supervisor, or the agency for which the employee works, directly or indirectly interferes, restrains, coerces or retaliates against an employee because the employee has filed or attempted to file a grievance with the board, the employee shall be entitled to file a complaint with the board.

(2) The complaint shall be in writing and shall contain a clear and concise statement of facts constituting the alleged interference, restraint, coercion or retaliation.

(3) The board shall serve the complaint upon the employee's supervisor or the agency for which the employee works and the supervisor or agency shall have 10 days from the date of service of the complaint upon them to respond to the complaint.

(4) After 10 days have elapsed from the date of service of the complaint, the board shall commence with step four (d) of the formal appeals procedure. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75; AMD, 1984 MAR p. 599, Eff. 4/13/84.)

Sub-Chapter 6

Public Employees Collective Bargaining

General Provisions

24.26.601 DEFINITIONS (1) The board hereby adopts the definitions set forth in section 39-31-103, MCA.

(2) The word "board" means the board of personnel appeals and in the proper context may also mean an agent appointed by the board to perform certain board functions. (History: Sec. 39-31-104, MCA; IMP, 39-31-104, MCA; NEW, Eff. 6/14/74.)

24.26.602 DURATION OF NEGOTIATED AGREEMENTS

(1) Agreements reached between a public employer and a labor organization shall be for a minimum of one-year. (History: Sec. 39-31-104, MCA; IMP, 39-31-104, MCA; NEW, Eff. 6/14/74; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.603 FILING OF LABOR ORGANIZATION'S BYLAWS

(1) Any employee organization seeking certification from the board as exclusive representative of a group of employees must first file with the board a copy of the labor organization's written bylaws. If revisions or changes are made, the bylaws must be refiled.

(2) The bylaws must provide for and guarantee that:

(a) provisions are made for democratic organization and procedures;

(b) elections are held pursuant to adequate standards and safeguards;

(c) controls are provided for the regulation of officers and agents having fiduciary responsibility; and

(d) sound accounting, fiscal control, and annual audit requirements exist. (History: Sec. 39-31-104, MCA; IMP, 39-31-206, MCA; NEW, Eff. 6/4/74; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.604 PROOF OF INTEREST CONFIDENTIAL

(1) The proof of interest submitted with any petition shall not be furnished to any of the parties. The board shall consider the adequacy of the showing of interest and such decision shall not be subject to challenge. (History: Sec. 39-31-104, MCA; IMP, 39-31-207, MCA; NEW, Eff. 6/4/74.)

Rules 24.26.605 through 24.26.609 reserved

Unit Determinations

24.26.610 COMPOSITION OF UNIT (1) A unit may consist of all of the employees of the employer or any department, division, bureau, section, or combination thereof if found to be appropriate by the board. (History: Sec. 39-31-104, MCA; IMP, 39-31-202, MCA; NEW, Eff. 6/4/74.)

24.26.611 APPROPRIATE UNIT (1) In considering whether a bargaining unit is appropriate, the board shall consider such factors as:

- (a) community of interest;
- (b) wages;
- (c) hours;
- (d) fringe benefits and other working conditions;
- (e) the history of collective bargaining;
- (f) common supervision;
- (g) common personnel policies;
- (h) extent of integration of work functions and interchange among employees affected; and,
- (i) desires of the employees. (History: Sec. 39-31-104, MCA; IMP, 39-31-202, MCA; NEW, Eff. 6/4/74.)

24.26.612 PETITIONS FOR NEW UNIT DETERMINATION AND ELECTION (1) A petition for new unit determination and election may be filed with the board by a labor organization or a group of employees.

(2) The original petition shall be signed by the petitioner(s) or their authorized representative.

(3) The original petition and three copies of the petition shall be filed with the board.

(4) The petition shall contain:

(a) a description of the unit to be determined specifying inclusions and exclusions;

(b) a statement as to whether there is any known disagreement between the employer and the petitioner as to the nature and scope of the proposed unit and the reasons for the disagreement;

(c) the names of all labor organizations known to the petitioner who claim to represent employees in the proposed unit;

(d) the expiration dates and brief description of any contracts covering any employees in the proposed unit;

(e) the approximate number of employees in the proposed unit; and

(f) any other relevant facts.

(5) The petition shall be accompanied by proof, consisting of authorization cards, or copies thereof, from 30% of the employees in the proposed unit, which have been individually signed and dated within 6 months of the date of the filing of the petition. The cards shall indicate that the signatories desire to be represented for collective bargaining purposes by the petitioner.

(6) The board shall serve a copy of the petition upon the public employer. (History: Sec. 39-31-104, MCA; IMP, 39-31-207, MCA; NEW, Eff. 6/4/74; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

Rule 24.26.613 reserved

24.26.614 EMPLOYER COUNTER PETITION (1) The employer shall have 5 working days from receipt of the petition in which to file a counter petition with the board.

(2) The employer shall file a counter petition when the employer disagrees with the appropriateness of the proposed unit as described in the petition.

(3) The petition shall contain:

(a) the specifics of the nature of employer's disagreement with the petitioner's proposed appropriate unit;

(b) a detailed description of the employer's proposed appropriate unit;

(c) the number of employees in the employer's proposed unit;

(d) the expiration dates and brief description of any contracts covering any employees in the employer's proposed unit; and

(e) any other relevant facts.

(4) The employer shall serve a copy of the counter petition upon the petitioner. (History: Sec. 39-31-104, MCA; IMP, 39-31-207, MCA; NEW, Eff. 6/4/74; AMD, 1984 MAR p. 599, Eff. 4/13/84; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

Rule 24.26.615 reserved

24.26.616 NOTICE OF UNIT DETERMINATION PROCEEDINGS

(1) The board shall require the employer to post in a conspicuous manner a notice of unit determination proceedings. Such notice shall be provided by the board and shall remain posted for a period of 20 days.

(2) The employer shall confirm in writing to the board that it has received, posted, and shall continue posting of the notice for the required 20 days. (History: Sec. 39-31-104, MCA; IMP, 39-31-207, MCA; NEW, Eff. 6/4/74.)

Rule 24.26.617 reserved

24.26.618 PETITION TO INTERVENE (1) Within 20 days from the first day of posting of the notice of unit determination proceedings, any labor organization or group of employees may file a petition to intervene.

(2) The petition shall contain the name and address of petitioner.

(3) The petition shall be accompanied by proof of interest consisting of authorization cards, or copies thereof, from 10% of the employees in the proposed unit, which have been signed and dated within 6 months of the date of the filing of the petition. The cards shall indicate that the signatories desired to be represented for collective bargaining purposes by the petitioner.

(4) The petition to intervene shall conform in all other respects to the requirements for a petition for new unit determination and election.

(5) The board shall serve a copy of the petition to intervene upon all other parties. (History: Sec. 39-31-104, MCA; IMP, 39-31-207, MCA; NEW, Eff. 6/4/74; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

Rule 24.26.619 reserved

24.26.620 PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT DETERMINATION AND ELECTION (1) The board shall direct an investigation of all questions and facts concerning the proposed unit, and shall have the following options:

(a) to direct a unit determination hearing after the time for intervening has passed; or

(b) to dispense with a unit determination hearing under the following conditions:

(i) the employer has not filed a counter petition;

(ii) no intervenors contest the petitioner's proposed unit; or

(iii) the parties have entered into a consent election agreement.

(2) The excelsior list must be provided to the petitioner within 10 days of the posting of notice of the unit determination proceedings.

(3) The parties may waive a hearing and enter into a consent election agreement after the time to intervene has past. Such agreement shall be drafted by the board's election judge and must include a description of the unit and the time and place of the election. The bargaining unit set out in the consent agreement shall be deemed an appropriate bargaining unit when it is signed by the parties and approved by the election judge.

(4) After a hearing, the board shall issue its determination of the appropriate unity. If a unit petitioned for is found not to be appropriate, the findings and conclusions shall give specific reasons therefor. If the unit is found to be appropriate, the board shall schedule the election and a pre-election conference at which time challenges for individual inclusions and exclusions shall be made by either party. (History: Sec. 39-31-104, MCA; IMP, 39-31-207, MCA; NEW, Eff. 6/4/74; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

Rule 24.26.621 reserved

24.26.622 EMPLOYER PETITION (1) A petition may be filed with the board by an employer alleging that one or more labor organizations have presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

(2) The petition shall be signed by the petitioner or its authorized representative.

(3) The petition shall contain:

(a) a statement naming all labor organizations making a claim to the employer to be recognized as the exclusive representative and bargaining agent;

(b) a concise statement of how the demands for recognition took place;

(c) where there is an employer-recognized or board-certified representative, a statement by the employer of what criteria it bases its doubt that the incumbent, exclusive representative does not have the majority support of the members of the bargaining unit in question; and

(d) a description of the bargaining unit the labor organizations demand to represent, including the approximate number of employees in the unit or units that are in dispute, and an enumeration, by job title, of the inclusions and exclusions proposed by the labor organizations;

(e) a brief description, including expiration dates, of all contracts covering employees in the proposed unit; and

(f) any other relevant facts.

(4) Petitions may be filed when any of the following circumstances apply:

(a) during the period not more than 90 days, and not less than 60 days prior to the termination date of the existing collective bargaining agreement;

(b) during January of the year the existing collective bargaining agreement terminates, if the bargaining unit is comprised of employees of school districts, units of the university system, or a community college;

(c) after the termination date of the existing collective bargaining agreement; or

(d) when the incumbent bargaining representative gives notice to the employer that it desires to begin negotiations of a successor agreement.

(5) If after investigating the matters alleged in the petition, the board finds that there has been a sufficient demand for recognition made of the employer, and where applicable that there are sufficient, objective criteria for the employer to, in good faith, doubt the certified or recognized bargaining representative's majority status, then the board shall serve a copy of the petition on all parties named as claiming to be the exclusive representative and bargaining agent.

(6) The refusal to serve a petition is appealable to the full board if written exceptions to the refusal are filed with the board within 20 days after the date of the notification of the refusal to serve the petition.

(7) The same right of intervention shall exist for an employer petition as exists for unit determination petitions. (History: Sec. 39-31-104, MCA; IMP, 39-31-207(1)(b), MCA; NEW, 1978 MAR p. 516, Eff. 4/25/78; AMD, 1979 MAR p. 1494, Eff. 11/30/79; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

Rules 24.26.623 through 24.26.629 reserved

Unit Clarifications

24.26.630 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT

(1) A petition for clarification of bargaining unit may be filed with the board by an exclusive representative of the bargaining unit in question or by the public employer only if:

(a) there is no question concerning representation;

(b) the parties to the agreement are neither engaged in negotiations nor within 120 days of the expiration date of the agreement, unless there is mutual agreement by the parties to permit the petition;

(c) a petition for clarification has not been filed with the board concerning substantially the same unit within the past 12 months immediately preceding the filing of the petition; and

(d) no election has been held in substantially the same unit within the past 12 months immediately preceding the filing of the petition.

(2) A copy of the petition shall be served by the board upon the bargaining representative if filed by a public employer and upon the employer if filed by a bargaining representative.

(3) A petition for clarification of an existing bargaining unit shall contain the following:

(a) the name and address of the bargaining representative involved;

(b) the name and address of the public employer involved;

(c) the identification and description of the existing bargaining unit;

(d) a description of the proposed clarification of the unit;

(e) the job classification(s) of employees as to whom the clarification issue is raised, and the number of employees on each such classification;

(f) a statement setting forth the reason why petitioner desires a clarification of the unit;

(g) a statement that no other employee organization is certified to represent any of the employees who would be directly affected by the proposed clarification;

(h) a brief and concise statement of any other relevant facts; and

(i) the name, affiliation, if any, and the address of petitioner.

(4) Should an agent of the board determine that the petition is defective in time or form as set forth in ARM 24.26.630(1) and (2), the agent may issue a recommended order that the petition be dismissed. The recommended order is subject to review by the board provided an appeal is timely filed within 10 business days of the date the recommended order is mailed. If no appeal is taken, the recommended order is the final order of the board.

(5) The party on whom the petition was served shall have 20 days to file a response with the board. Absent an agreed upon stipulation of the parties to extend the response time, failure to respond will result in the agent of the board issuing a recommended order granting the relief requested by the petitioner. The recommended order is subject to board review if appealed within 10 business days. If not appealed, the recommended order is the final board order.

(a) If upon investigation it is determined that no question of fact exists and if the parties stipulate to a modification of the existing unit, the board agent shall issue a recommended order consistent with the agreement of the parties.

(6) Upon a determination that a question of fact exists, the parties will mediate the dispute before an agency mediator within a time frame and mediation method determined by the mediator and the parties. Mediation will be concluded within 45 days of assignment unless the parties mutually agree to an extension. If the parties are unable to mediate the dispute, the board shall set the matter for hearing. Upon completion of the hearing the board may:

(a) grant the petitioned-for clarification in whole or in part;
or

(b) deny the petitioned-for clarification in whole or in part.

(History: 39-31-104, MCA; IMP, 39-31-207, MCA; NEW, 1978 MAR p. 513, Eff. 4/25/78; AMD, 1993 MAR p. 3026, Eff. 1/1/94; AMD, 2001 MAR p. 446, Eff. 3/23/2001.)

Rules 24.26.631 through 24.26.642 reserved

Petitions for Decertification

24.26.643 PETITION FOR DECERTIFICATION (1) A petition for decertification of an exclusive representative shall be filed by an employee, a group of employees, or a labor organization, provided that 12 months have elapsed since the last election.

(2) The petition must be filed during the 30 day window period which starts on the 90th day and ends on the 60th day prior to the termination date of the collective bargaining agreement, or upon the terminal date thereof.

(3) A petition seeking decertification of a bargaining unit comprised of employees of school districts, units of the Montana university system, or of a community college may only be filed during January of the year the existing collective bargaining agreement is scheduled to terminate, or after the termination of the existing collective bargaining agreement.

(4) The original petition shall be signed by the petitioner(s) or their authorized representative.

(5) The original petition and three copies of the petition shall be filed with the board.

(6) The petition shall contain:

(a) the name and address of petitioner(s);

(b) a statement that the labor organization that has been certified or is currently being recognized by the employer as bargaining representative no longer represents the interests of the majority of the employees in the unit;

(c) the name of the labor organization, if any, which claims to be the majority representative;

(d) a description of the bargaining unit involved and the approximate number of employees; and

(e) any other relevant facts.

(7) The petition shall be accompanied by proof that 30% of the employees in the unit do not desire to be represented by the existing exclusive representative. Proof shall consist of authorization cards, or copies thereof, which have been individually signed and dated within 6 months of the date of the filing of the petition. The card shall indicate that the signatories do not desire to be represented for collective bargaining purposes by the board-certified or employer-recognized exclusive representative, or that they desire to be represented by the petitioner.

(8) The board shall serve a copy of the petition upon the labor organization(s) concerned, and upon the public employer. (History: Sec. 39-31-104, MCA; IMP, 39-31-207, MCA; NEW, Eff. 6/4/74; AMD, Eff. 11/24/76; AMD, 1978 MAR p. 74, Eff. 2/24/78; AMD, 1984 MAR p. 599, Eff. 4/13/84; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.644 ANSWER (1) Each party may file an answer to the petition for decertification within 5 working days after receipt thereof.

(2) The composition of the unit is not a proper matter to be considered in a decertification proceeding. Eligible voters for any decertification election shall be those who are members of the bargaining unit at the time of the filing of the petition. (History: Sec. 39-31-104, MCA; IMP, 39-31-207, MCA; NEW, Eff. 6/4/74; AMD, 1979 MAR p. 1495, Eff. 11/30/79.)

24.26.645 NOTICE OF DECERTIFICATION PROCEEDINGS (1) The board shall require the employer to post in a conspicuous manner, a notice of decertification proceedings. Such notice shall be provided by the board and shall remain posted for a period of 20 days.

(2) The employer shall confirm in writing to the board that it has received, posted, and shall continue posting of the notice for the required 20 days. (History: Sec. 39-31-104, MCA; IMP, 39-31-207, MCA; NEW, Eff. 6/4/74.)

24.26.646 PETITION TO INTERVENE (1) Any labor organization or group of employees may file a petition to intervene within 20 days of the first day of posting of the notice of decertification proceedings.

(2) The original petition shall be signed by the petitioner(s) or their authorized representative.

(3) The original petition and three copies of the petition shall be filed with the board.

(4) The petition shall contain the name and address of petitioner(s).

(5) The petition shall be accompanied by proof of interest representing 10% of the employees in the unit. Proof shall consist of authorization cards, or copies thereof, which have been individually signed and dated within 6 months of the date of the filing of the petition. The cards shall indicate that the signatories do not desire to be represented for collective bargaining purposes by the board-certified or employer-recognized exclusive representative, or that they desire to be represented by the petitioner.

(6) The petition to intervene shall conform in all other respects to the requirements for a petition for decertification.

(7) The board shall serve a copy of the petition to intervene upon all other parties. (History: Sec. 39-31-104, MCA; IMP, 39-31-207, MCA; NEW, Eff. 6/4/74; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.647 PROCEDURE FOLLOWING FILING OF PETITION FOR DECERTIFICATION (1) The board shall direct an investigation of all questions and facts concerning the proposed decertification and shall have the following options:

(a) to direct a hearing if deemed appropriate, after which the election and a pre-election conference shall be scheduled; or

(b) to schedule the election and a pre-election conference.

(2) An election will be held only after the existing unit has been determined, and an election is found to be warranted. (History: Sec. 39-31-104, MCA; IMP, 39-31-207, MCA; NEW, Eff. 6/4/74; AMD, 1984 MAR p. 599, Eff. 4/13/84.)

24.26.648 DISAFFIRMANCE OF REPRESENTATION BY BARGAINING REPRESENTATIVE (1) After one year from the date of certification by the board or recognition by an employer of the bargaining representative and after the filing of a petition for decertification by an employee or group of employees an incumbent bargaining agent may submit to the board an affidavit of disaffirmance of representation stating it no longer desires to represent the bargaining unit in question.

(2) Upon the filing of such an affidavit the bargaining representative's name shall be removed from the ballot in the decertification election. If no other bargaining representative appears on the ballot, no election shall be conducted. (History: Sec. 39-31-104, MCA; IMP, 39-31-207, MCA; NEW, 1979 MAR p. 1495, Eff. 11/30/79; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.649 PETITIONS TO REVOKE CERTIFICATION OR RECOGNITION (1) A petition to revoke board certification or employer recognition of an exclusive representative may be filed by the employer or the exclusive representative of a bargaining unit.

(2) The board will order revocation only upon an unequivocal showing that:

(a) no collective bargaining agreement is in effect; and

(b) the exclusive representative disclaims further interest in representing the bargaining unit. (History: Sec. 39-31-104, MCA; IMP, Sec. 39-31-207, MCA; NEW, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.650 PETITIONS TO AMEND CERTIFICATION OF EXCLUSIVE REPRESENTATIVE (1) A petition to amend the certification of an exclusive representative may be filed by a labor organization when there is no question of representation and one of the following reasons exists:

(a) to reflect a change in name or affiliation of the exclusive representative; or

- (b) a change in name of the employer.
- (2) Petitions to affiliate exclusive representatives of bargaining units with other labor organizations shall show that members of the bargaining unit were afforded due process and will have continuity of representation.
 - (a) Due process in the affiliation process shall be demonstrated by a showing that members of the bargaining unit were:
 - (i) given notice of the impending affiliation vote;
 - (ii) given an opportunity to discuss the proposed affiliation at a meeting prior to voting; and
 - (iii) permitted to vote by secret ballot on the affiliation question.
 - (b) Continuity of representation shall be demonstrated by a showing that:
 - (i) there will be a continuation of bargaining unit autonomy;
 - (ii) local officers will be retained;
 - (iii) financial arrangements are not substantially different under the affiliation than before; and
 - (iv) procedures regulating grievance handling, voting and by-law changes are continued.
- (3) The board will conduct an investigation upon receipt of the petition and will issue an amendment to the certification or will deny the petition. (History: 39-31-104, MCA; IMP, 39-31-207, MCA; NEW, 1993 MAR p. 3026, Eff. 1/1/94; AMD, 2001 MAR p. 446, Eff. 3/23/2001.)

24.26.651 MERGERS AND CONSOLIDATIONS (1) When national, regional, or state-wide labor organizations with local affiliates merge, combine or consolidate in accordance with their respective by-laws and constitutions, the merged, combined or consolidated labor organization shall have the same rights, duties and privileges under law as its predecessor organizations. (History: 39-31-104, MCA; IMP, 39-31-206 and 39-31-207, MCA; NEW, 2000 MAR p. 2308, Eff. 8/25/00.)

Rules 24.26.652 through 24.26.654 reserved

Elections

24.26.655 ELECTION DIRECTED (1) When a petition for an election has been filed, the board shall direct an election be held, if an appropriate unit has been determined or if no question of representation exists. The election shall be conducted under the direction and supervision of the board with all determinations made by an agent subject to review by the board of personnel appeals by an aggrieved party. (History: Sec. 39-31-104, MCA; IMP, 39-31-208, MCA; NEW, Eff. 6/5/74; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.656 CONDITIONS (1) All elections shall be held at such times and places and upon such terms as the board may specify, including on-site or mail-ballot elections. (History: Sec. 39-31-104, MCA; IMP, 39-31-208, MCA; NEW, Eff. 6/4/74; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.657 SECRET BALLOT (1) All elections shall be by secret ballot. (History: Sec. 39-31-104, MCA; IMP, 39-31-208, MCA; NEW, Eff. 6/4/74.)

24.26.658 ELIGIBLE VOTERS (1) The employees eligible to vote shall be those within the unit on the date of the filing of the petition excluding those employees who have voluntarily terminated their employment between the filing date and the date of the election.

(2) At least 7 days prior to the election, the employer shall furnish to each labor organization which is party to the proceeding, a list of names and addresses of the employees eligible to vote. (History: Sec. 39-31-104, MCA; IMP, 39-31-208, MCA; NEW, Eff. 6/4/74.)

24.26.659 NOTICE (1) Not more than 20 calendar days nor less than 10 calendar days prior to any election set by the board, the board shall cause to be prepared and distributed a Notice of Election specifying the date and place thereof; the hours the polls will be open; the classification of employees in the appropriate unit for which the election is to be conducted; rules concerning eligibility to vote; a sample ballot; and such additional information and instruction as the board may consider appropriate. Copies of the Notice of Election and the sample ballot will be sent to all labor organizations appearing on the ballot and to the public employer. The public employer shall cause copies of the Notice of Election and the sample ballot to be posted for at least 5 working days prior to the election at work locations where notices are normally posted for the benefit of employees in the appropriate unit. The posting requirement may be modified by mutual agreement of management and the

parties appearing on the ballot. (History: Sec. 39-31-104, MCA; IMP, 39-31-208, MCA; NEW, Eff. 6/4/74.)

24.26.660 BALLOTS (1) The rank order of labor organization names to be placed on the ballot will be determined during the pre-election hearing. The currently recognized labor organization shall always be on the ballot unless otherwise agreed. "No Representation" will always be listed as the last choice.

(2) Only those labor organizations which have been designated by more than 10% of the employees in the unit shall be placed on the ballot.

(3) Absentee ballots shall not be allowed. (History: Sec. 39-31-104, MCA; IMP, 39-31-208, MCA; NEW, Eff. 6/4/74; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.661 POLL WATCHERS (1) Each party to the election shall be entitled to be represented by an equal number of observers watching at each polling place when the election is held on-site. The failure or refusal of one party to send an observer to a polling place does not infringe on the right of another party to send an observer to that place. Observers shall be employees eligible to vote, or in the case of employer's observers, shall be any appropriate persons who are not on the list of eligible voters. Each party may observe the ballot counting. (History: Sec. 39-31-104, MCA; IMP, 39-31-208, MCA; NEW, Eff. 6/4/74; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.662 POLLING AREA ELECTIONEERING (1) Prior to the commencement of an on-site election the agent of the board shall designate the polling area and no electioneering of any kind shall be permitted within this area. Any violation of this rule by any party or its representative or agent may be grounds for setting aside the election. (History: Sec. 39-31-104, MCA; IMP, 39-31-208, MCA; NEW, Eff. 6/4/74; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.663 CHALLENGES (1) All employees whose names appear on the list certified by the board as being a complete list of the employees within the defined appropriate unit shall be eligible to vote.

(2) Any prospective voter may be challenged for cause.

(3) All employees whose names do not appear upon the list certified by the board as being a complete list of the employees within the defined appropriate unit shall be challenged by the agent of the board.

(4) A challenged voter shall be permitted to vote but his ballot shall not be cast. It shall instead be sealed in a separate, unmarked envelope under the supervision of the agent of the board and then inserted in a special identifiable form

envelope provided by the board for that purpose and returned to the board. (History: 39-31-104, MCA; IMP, 39-31-208, MCA; NEW, 6/4/74.)

24.26.664 MAJORITY (1) In all elections, a majority of the valid votes cast shall determine the employees' representative to be certified. In the case of a tie vote, no certification shall be issued. (History: 39-31-104, MCA; IMP, 39-31-208, MCA; NEW, Eff. 6/4/74.)

24.26.665 RUNOFF (1) The board shall conduct a runoff election when an election in which the ballot provides for not less than three choices (i.e., at least two representatives and no representative) results in no choice receiving a majority of the valid ballots cast.

(2) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes in the previous election.

(3) Those eligible to vote in the original election shall be eligible to vote in the runoff election. (History: 39-31-104, MCA; IMP, 39-31-208, MCA; NEW, Eff. 6/4/74.)

24.26.666 BALLOT TALLY AND OBJECTIONS (1) Ballots will be tallied on the day of the election. Within 5 working days after the tally of ballots, the parties to the election may file objections with the board relating to the conduct of the election or conduct affecting the results of the election. The board agent conducting the election will attempt to notify the parties of the results of the ballot tally.

However, in either on site or mail ballot elections the burden is on the parties to confirm the election tally with the board agent assigned to the election.

(2) Objections relating to the conduct of the election or conduct affecting the results of the election shall be in writing and shall contain a brief statement of facts upon which the objections are based. An original and three copies of such objections shall be signed and filed with the board, the original being sworn to. The party filing an objection shall serve a copy upon each of the other parties to the election. (History: 39-31-104, MCA; IMP, 39-31-208, MCA; NEW, Eff. 6/4/74; AMD, 1993 MAR p. 3026, Eff. 1/1/94; AMD, 2001 MAR p. 446, Eff. 3/23/2001.)

24.26.667 CERTIFICATION (1) If no objections are filed within the time set forth above, or if the challenged ballots are insufficient in number to affect the result of the election, the board shall forthwith issue to the parties a certification of representative, where appropriate.

(2) In order to be certified by the board as the exclusive representative for any bargaining unit that existed before July 1, 1973, and is presently in existence, the labor organization must submit a copy of the existing collective bargaining agreement as support of its claim. (History: 39-31-104, MCA; IMP, 39-31-208, MCA; NEW, Eff. 6/4/74; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

Rules 24.26.668 through 24.26.679 reserved

Unfair Labor Practice Charges

24.26.680 COMPLAINT (1) A complaint alleging that a person or organization has engaged in or is engaging in an unfair labor practice may be filed by an employee, a group of employees, a labor organization or a public employer within 6 months thereof.

(2) A complaint shall be in writing. The original shall be signed and verified by the complainant or the authorized representative. The original and three copies of the complaint shall be filed with the board.

(3) A complaint shall contain the following:

(a) the name, address and telephone number of the complainant;

(b) the name, address and telephone number of the party against whom the charge is made; and

(c) a clear and concise statement of facts constituting the alleged violation, including the time and place of occurrence of the particular acts and a statement of the portion or portions of the law or rules alleged to have been violated.

(4) If the board determines that the facts alleged in the complaint do not constitute an unfair labor practice under section 39-31-401 or 39-31-402, MCA, it shall dismiss the charge. (History: Sec. 39-31-104, MCA; IMP, 39-31-406, MCA; NEW, Eff. 6/4/74; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.680B RESPONSE TO COMPLAINT AND INVESTIGATION OF COMPLAINT

(1) The board shall serve one copy of the complaint upon each party charged with the unfair labor practice.

(2) A party so charged shall file a response with the board to the complaint within 10 days. A response is a letter setting forth in detail facts relevant to the complaint which the respondent wishes to bring to the board's attention including a specific reply to each factual allegation made in the complaint.

(3) As provided for in 39-31-405(1), MCA, after receipt of the response, the board shall appoint an investigator to investigate the alleged unfair labor practice.

(4) As provided for in 39-31-405(2), MCA, if after the investigation, the agent designated by the board determines that the charge is without probable merit the board shall issue and cause to be served upon the complaining party and the person being charged notice of its intention to dismiss the complaint. The dismissal becomes a final order of the board unless either party requests a review of the decision to dismiss the complaint. The request for a review must be made in writing within 10 days of receipt of the notice of intention to dismiss decision. This rule requires that the request for review must

clearly set forth the specific factual and/or legal reasons

indicating how the investigator's finding of no probable merit is in error.

(5) As provided for in 39-31-405, MCA, if after the investigation or after the appeal provided for in subsection (2) of 39-31-405, MCA, the investigator or the board determines that there is probable merit for the charge, the board shall issue and cause to be served upon the complaining party and any party charged a notice of finding of probable merit.

(6) As provided for in 39-31-405(4), MCA, if a finding of probable merit is made, the person or entity against whom the charge is filed shall file an answer to the complaint. The answer must be made in writing within 10 days of receipt of the notice of finding of probable merit.

(7) A finding of probable merit is appealable only after the decision of the hearing examiner has been issued. (History: Sec. 39-31-104, MCA; IMP, 39-31-405(1), (2), (3), (4), MCA; NEW, 1984 MAR p. 599, Eff. 4/13/84; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.681 ANSWER (1) The party named in the complaint shall file a formal, written verified answer within 10 days after service of the notice of finding of probable merit.

(2) One copy of the answer shall be served on the complainant, and the original, with proof of due service and 5 copies, shall be filed with the board.

(3) The answer shall include a specific admission, denial, or explanation of each allegation in the complaint.

(4) If the party charged fails to file a timely answer, the board may consider it an admission of material facts and waiver of a hearing. (History: Sec. 39-31-104, MCA; IMP, 39-31-406, MCA; NEW, Eff. 6/4/74; AMD, 1984 MAR p. 599, Eff. 4/13/84.)

24.26.682 NOTICE OF HEARING (1) After the time for filing an answer has passed, the board shall serve a notice of hearing upon the parties. The hearing date shall not be less than 5 working days after the date of service. The notice shall include all those items listed in section 2-4-601, MCA, and shall state whether the board or an agent of the board will hear the complaint. (History: Sec. 39-31-104, MCA; IMP, 39-31-406, MCA; NEW, Eff. 6/4/74; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.683 PROPOSED FINDINGS (1) The board may request proposed findings of fact and conclusions of law. (History: Sec. 39-31-104, MCA; IMP, 39-31-406, MCA; NEW, Eff. 6/4/74.)

24.26.684 EXCEPTIONS (1) If a majority of the board have not heard the case, the person who conducted the hearing shall serve a proposed decision and order upon the parties who shall have 20 days to file exceptions with the board.

(2) If briefs in support of a party's exceptions are to be submitted, those briefs must be filed with the board at least 15 days before the board hearing or the briefs will not be accepted or considered. (History: Sec. 39-31-104, MCA; IMP, 39-31-406, MCA; NEW, Eff. 6/4/74; AMD, 1984 MAR p. 599, Eff. 4/13/84; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.685 DISQUALIFICATION OF HEARING EXAMINER (1) A party desiring to disqualify a hearing examiner on an unfair labor practice case must, within 5 days from receipt of information notifying that party of the appointment of the hearing examiner, file with the board a written request to disqualify the appointed hearing examiner.

(2) If several parties to an unfair labor practice proceeding disqualify the first appointed hearing examiner, then all parties, other than the party who first exercises the right, shall still retain their right to disqualify one succeeding, appointed hearing examiner, subject to the conditions of subsection (1), of this rule. Upon the filing of a timely, written request to disqualify a hearing examiner, the hearing examiner shall take no further action in that case.

(3) If several unfair labor practices are being heard together in one proceeding, each party still has only one peremptory challenge to a hearing examiner for each proceeding. (History: Sec. 39-31-104, MCA; IMP, 39-31-405(5), MCA; NEW, 1984 MAR p. 599, Eff. 4/13/84.)

Rules 24.26.686 through 24.26.694 reserved

Requests for Mediation

24.26.695 PETITION (1) In the event of a labor dispute, a petition, in writing, requesting assistance of the board, may be filed with the board by an employee or group of employees, a labor organization, or public employer. The original of the petition shall be signed by the petitioner or his authorized representative, and the original and 5 copies thereof shall be filed with the board. The petitioner shall serve a copy of the petition simultaneously upon any party named in the petition. The petition shall contain:

(a) name, address, and telephone number of petitioner or authorized representative;

(b) name, address, and telephone number of public employer;

(c) description of unit involved;

(d) name, address, and telephone number of the recognized or certified labor organization and authorized representative thereof;

(e) description of the dispute in detail;

(f) statement as to what assistance is requested; and

(g) statement indicating if the request is unilateral or joint.

(2) A petition may be withdrawn with the consent of the board.

(3) Upon petition for interest mediation, the board shall designate a qualified labor mediator who is an agent of the board to mediate the dispute. Upon the written request of both parties, the board may instead request a mediator from the federal mediation and conciliation service, if one is available.

(4) Any information disclosed to the mediator in the performance of these duties shall not be divulged unless approved by the parties involved. All files, records, reports, documents, or other papers received or prepared by the mediator shall be classified as confidential and not as a public record. Such matters shall not be disclosed to anyone without the prior consent of the board.

(5) The mediator shall not produce any confidential records or testimony with regard to any mediation on behalf of a party to any case pending in any proceeding before any court, board, investigatory body, arbitrator, or fact finder without the written consent of the board.

(6) The mediator may hold separate or joint meetings with the parties or their representatives, and such meetings shall be private and nonpublic, except if otherwise mutually agreed upon by the parties. (History: Sec. 39-31-104, MCA; IMP, 39-31-307 and 39-31-308, MCA; NEW, Eff. 6/4/74; AMD, 1984 MAR p. 599, Eff. 4/13/84; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.695A GRIEVANCE MEDIATION (1) When a dispute exists between a public employer and a labor organization over the meaning, interpretation or application of an existing collective bargaining agreement, the parties may request grievance mediation. The board, in its discretion, may designate a qualified labor mediator to mediate the dispute under the following conditions:

- (a) the parties mutually agree to the request;
- (b) the parties mutually agree to the conditions set by the board; and
- (c) the parties mutually agree to waive the applicable time limitations in the collective bargaining agreement's grievance procedure.

(2) Matters disclosed to the mediator by the parties during the course of mediation shall be confidential and shall not be divulged unless approved by both parties to the dispute.

(3) In the event the dispute goes to arbitration, the mediator may not be called as a witness or otherwise called to divulge information or settlement offers which may have been discussed during mediation. (History: Sec. 39-31-104, MCA; IMP, Sec. 39-31-306, MCA; NEW, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.696 MEDIATION (IS HEREBY REPEALED) (History: Sec. 39-31-104, MCA; IMP, 39-31-307, MCA; NEW, Eff. 6/4/74; REP, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.697 FACT FINDER (1) Either party to a dispute may petition the board to initiate fact finding or, if it is apparent that matters in disagreement might be more readily settled if facts involved were determined and publicly known, the board may initiate fact finding in accordance with section 39-31-308, MCA.

(2) Within 3 days of receipt of a petition for fact finding, the board shall submit a list of five qualified, disinterested persons to each of the parties to the dispute.

(3) Within 5 days of receipt of the list, the parties shall select a fact finder by having the petitioner strike two names and then the other party strike two names. The remaining name is that of the fact finder.

(4) The parties shall immediately notify the board of the name of the fact finder. The board shall notify the fact finder along with a request to immediately establish dates and places of hearings.

(5) Within 20 days from the date of hearing, the fact finder shall make written findings of fact and recommendations for resolution of the dispute. The findings shall be served on both parties and a copy sent to the board.

(6) The fact finder may request the board to make the report public 5 days after the parties are served with the findings.

(7) 15 days after the parties are served the board shall provide that the report is open to public inspection.

(8) The cost of fact finding proceedings must be equally borne by the board and the parties concerned. The fact finder shall, within 10 working days of the written findings, submit an invoice of the costs and fees to the board which shall send copies of the invoice to both parties on which they will be billed for one-third of the total.

The parties shall pay the board within 5 days and the board shall forward the total amount to the fact finder. (History: Sec. 39-31-104, MCA; IMP, 39-31-309, MCA; NEW, Eff. 6/4/74; AMD, 1978 MAR p. 192, Eff. 2/24/78; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.698 ARBITRATION (1) The parties may, at any period in the negotiations, agree to submit the issues to binding arbitration in accordance with section 39-31-310, MCA.

(2) Both parties shall jointly notify the board in writing of this decision and of the identity of the arbitrator.

(3) The parties may petition the board to assist in the selection of the arbitrator by requesting that the board submit to them a panel of qualified arbitrators. (History: Sec. 39-31-104, MCA; IMP, 39-31-310, MCA; NEW, Eff. 6/4/74; AMD, 1993 MAR p. 3026, Eff. 1/1/94.)

24.26.698A PANEL OF ARBITRATORS AND FACT FINDERS

(1) The board shall maintain a panel of qualified labor arbitrators and fact finders for referral, upon request, to the parties to a labor dispute. Panel members are expected to conform to the ethical standards and procedures set forth in the code of professional responsibility for arbitrators of labor disputes as approved by the national academy of arbitrators. The board has established procedures to compile lists and appoint arbitrators or fact finders from such lists and considers such facts as background, experience, availability, acceptability, geographical location and the expressed preferences of the parties.

(2) Persons seeking to be listed on the panel must complete and submit an application form. The form may be obtained from the board offices, 1805 Prospect Avenue, Helena, or by writing to the board, P.O. Box 1728, Helena, MT 59624-1728. Upon receipt of an executed form, the board will review the application, assure that it is complete, and make any necessary inquiries. The board will review the completed application in light of the criteria set forth below and will decide whether an applicant should be listed on the panel. Each applicant will be notified in writing of the board's decision.

(3) Applicants will be accepted on the panel if they:

(a)(i) are experienced in decision-making roles in the resolution of labor-management disputes; or

(ii) have extensive experience in relevant positions in collective bargaining; and

(b) are capable of conducting an orderly hearing, can analyze testimony and exhibits; and

(c) can prepare clear and concise findings and awards within reasonable time limits.

(4) The qualifications listed in subsection (3) of this rule are best demonstrated by the submission of actual arbitration awards and/or fact finding reports prepared by the applicant while serving as an impartial arbitrator chosen by the parties to disputes. Equivalent experience acquired in training, internship or other development programs, or experience such as that acquired as a hearing officer or judge in labor relations controversies also may be considered by the board.

(5) No advocate shall be listed on the panel. An advocate is a person who represents employers or labor organizations, as an employee, attorney or consultant, in matters related to collective bargaining. A person who was not an advocate when listed may not continue to be listed after becoming an advocate and must notify the board of such change in status immediately.

(6) Initial listing on the panel may be for a period not to exceed 3 years and may be renewed for periods not to exceed 2 years, provided upon review the listing is not canceled by the board as set forth below. Notice of cancellation may be given to the member whenever the member:

- (a) no longer meets the criteria for admission;
- (b) has been repeatedly and flagrantly delinquent in submitting awards;
- (c) has refused to make reasonable and periodic reports to the board as required;
- (d) has been the subject of complaints by parties who use board panels and the board, after appropriate inquiry, concludes that just cause for cancellation has been shown; or
- (e) is determined by the board to be unacceptable by the parties, based on board records showing the number of times the arbitrator or fact finder's name has been proposed to the parties and the number of times the person has been selected.

(7) When, pursuant to a request, the board submits a list of arbitrators or fact finders to the parties to a dispute, the names on the lists shall be drawn at random from the panel described above. However, the board will attempt to comply with a joint request of the parties to restrict the lists in any of the following ways:

(a) only arbitrators who are listed on the labor arbitration panel of the American arbitration association or the federal mediation and conciliation service or who are members of the national academy of arbitrators;

(b) only arbitrators whose resumes filed with the board show that they are engaged exclusively or primarily in the practice of arbitration or fact finding; or

(c) only arbitrators who reside in Montana.

(8) If they desire, the parties may jointly request a second list of arbitrators or fact finders. A second list will consist of names drawn at random from the panel without regard to any restrictions requested by the parties.

(9) Arbitrators and fact finders selected by the parties pursuant to referral of their name by the board shall notify the board of acceptance of appointments, scheduling of hearing, continuances or postponements, and cancellations.

(10) Arbitrators and fact finders listed on the panel shall provide the board with one copy of all written decisions or recommendations issued.

(11) Nothing contained herein should be construed to limit the right of parties to select jointly any arbitrators or arbitration procedure acceptable to them. (History: Sec. 39-31-104, MCA; IMP, Sec. 39-31-308 and 39-31-310, MCA; NEW, 1993 MAR p. 3026, Eff. 1/1/94.)

Sub-Chapter 7

Wage and Hour Reviews

24.26.701 PURPOSE (1) The purpose of these regulations is to create orderly and uniform procedures to be used when a party aggrieved by a wage claim decision of a department hearings officer seeks review of that decision by the board. (History: Sec. 2-4-201, MCA; IMP, 39-3-217, MCA; NEW, 1989 MAR p. 2250, Eff. 12/22/89.)

24.26.702 DEFINITIONS (1) The board hereby adopts the definitions set forth in section 39-3-201, MCA (1989).

(2) "Review" shall mean the process by which an appealed decision of a hearings officer is reviewed by the board. (History: Sec. 2-4-201, MCA; IMP, 39-3-217, MCA; NEW, 1989 MAR p. 2250, Eff. 12/22/89.)

Rules 24.26.703 and 24.26.704 reserved

24.26.705 RIGHT TO APPEAL (1) Any party aggrieved by a department hearings officer's wage claim determination made pursuant to section 39-3-216, MCA, may seek review of the determination by the board.

(2) The aggrieved party must seek review by filing a notice of appeal within 15 days after the day the decision of the hearings officer is mailed.

(3) The notice of appeal shall consist of a written statement of the party's desire to appeal the decision of the hearings officer. The notice of appeal must set forth the specific errors of the hearings officer and the issues that will be raised on appeal.

(4) The completed and signed notice of appeal shall be mailed to the central office of the department:

Administrator, Employment Relations Division
Department of Labor and Industry
P.O. Box 1728
Helena, MT 50624

(a) It must be postmarked no later than 15 days after the day the decision of the hearings officer was mailed.

(5) Upon receiving the notice of appeal, the administrator of the employment relations division shall immediately transmit the notice to the administrator of the board.

(6) The administrator of the board shall schedule a review of the determination. The review shall take place as soon as possible.

(7) The record of the hearing below shall be provided the board. The contents of the record shall be determined pursuant to section 2-4-614, MCA. (History: Sec. 2-4-201, MCA; IMP, 39-3-217, MCA; NEW, 1989 MAR p. 2250, Eff. 12/22/89.)

24.26.706 NOTICE OF REVIEW (1) Once the administrator has scheduled the review, the board shall give written notice of the date, time and place to all interested parties. Notice shall be mailed to the parties at least 10 days prior to the day of the review.

(2) At the request of a party, or upon its own motion, the board may, for good cause, continue the review. (History: 2-4-201, MCA; IMP, 39-3-217, MCA; NEW, 1989 MAR p. 2250, Eff. 12/22/89.)

24.26.707 REVIEW PROCEDURE (1) The review is to be conducted informally. However, any party may be represented by an attorney.

(2) The board may hear argument concerning the findings of fact and the conclusions of law reached by the hearings officer.

(3) Findings of fact must be supported by substantial competent evidence of record. Failure of the hearing officer to make a finding on a critical fact may be corrected by the board's remanding to the hearings officer.

(4) The board shall not consider any new evidence tendered at the review unless good cause is shown for the failure to produce the evidence before the hearings officer. If good cause is shown and new evidence is to be introduced, the board may remand the matter to the hearings officer for a ruling.

(5) The board may include in the record before it and consider as evidence all records of the department that are material to the issues. If the department records, or portions thereof, are not part of the record below, good cause must be shown why it was not offered into evidence before the hearings officer.

(6) If deemed necessary, the board may request briefs. (History: 2-4-201, MCA; IMP, 39-3-217, MCA; NEW, 1989 MAR p. 2250, Eff. 12/22/89; AMD, 2001 MAR p. 446, Eff. 3/23/2001.)

Rules 24.26.708 and 24.26.709 reserved

24.26.710 DECISION OF THE BOARD See page 1658 of MAR Issue #20. (History: 2-4-201, MCA; IMP, 39-3-217, MCA; NEW, 1989 MAR p. 2250, Eff. 12/22/89.)

24.26.711 BOARD'S RECONSIDERATION OF ITS DECISIONS

- (1) The following definitions apply to this rule:
 - (a) "Petition" means a petition for reconsideration.
 - (b) "Petitioner" means the party requesting reconsideration.
- (2) All petitions shall be filed within 10 days of mailing of the board's decision to the petitioner. The petitioner shall serve upon all parties a copy of the petition.
- (3) The filing of a petition is not a prerequisite for seeking judicial review of the board's final order.
- (4) A petition may be granted only upon the following grounds:
 - (a) Clerical error.
 - (b) To present relevant evidence of argument that proper procedures were not followed during the appeal to the board.
- (5) The petition must state the ground or grounds upon which reconsideration is sought and a detailed statement why the grounds will likely mandate a change in the board's decision.
- (6) The board shall rule on the petition at its next meeting and notify the parties of its decision.
- (7) A decision of the board denying a petition is a final order pursuant to sections 2-4-623 and 2-4-702, MCA. (History: Sec. 2-4-201, MCA; IMP, 39-3-217, MCA; NEW, 1989 MAR p. 2250, Eff. 12/22/89.)

24.26.712 CHALLENGES TO AND DISQUALIFICATIONS OF BOARD MEMBERS

- (1) No member of the board shall participate in a review of a wage claim in which he has an interest.
- (2) No member of the board shall represent any party or witness at any review before the board.
- (3) Any party may challenge any member of the board, in writing, served upon the board 15 days in advance of the scheduled review. The motion and answering affidavits shall be filed pursuant to ARM 24.26.212. (History: Sec. 2-4-201, MCA; IMP, 39-3-217, MCA; NEW, 1989 MAR p. 2250, Eff. 12/22/89.)